IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 108.

THE CAPITAL TRACTION COMPANY, *Plaintiff in Error*,

vs.

CHARLES HOF.

Brief on Behalf of the Defendant in Error.

STATEMENT OF CASE.

The defendant in error, Charles Hof, filed a suit for damages in the court of one of the justices of the peace in and for the District of Columbia against the Capital Traction Company. Process was duly issued and served and the defendant (the plaintiff in error) filed a plea of not guilty, upon which issue was joined and the defendant (the plaintiff in error) demanded a jury trial; thereupon, upon petition of the defendant (the plaintiff in error) to the Supreme Court of the District of Columbia, praying that the proceedings be taken to that court for trial, on the grounds that the justice of the peace had no jurisdiction to try the case, and that the trial prayed for by the defendant was not

the jury trial guaranteed by the Constitution of the United States, the writ of certiorari was issued from the Supreme Court of the District of Columbia. Proper return was made on said writ setting out the proceedings had before the magistrate. Thereupon a motion was made to quash the said writ of certiorari, but this motion the court denied and refused to quash the writ, and an order was entered directing that all the proceedings before the justice of the peace should be vacated; but the court also refused to grant the order for removal of the cause for trial in said court, and the case was practically left pending before the justice of the peace, either to be arrested in its progress or to be proceeded with, if proceeded with at all, without the intervention of a jury. The plaintiff (the defendant in error) thereupon appealed to the Court of Appeals of the District of Columbia and that court reversed the decision of the Supreme Court of the District of Columbia, and remanded the cause to the said court, with directions to quash the said writ of certiorari as prayed for by the plaintiff (the defendant in error).

The Capital Traction Company then prayed for a writ of error to this Court, but the Court of Appeals denied said writ. Whereupon they filed a petition to this Court for the allowance of a writ of error and the same was allowed by this Court.

Origin of the Jury System.

Mr. Justice Miller, in his Lectures on Constitutional Law, in speaking of the origin of the jury system, quoting from Forsyth's Trial by Jury, at page 512 of Miller on the Constitution of the United States, says:

> "The distinctive characteristic of the system is this:—That a jury consisted of a body of men taken from the community at large, summoned to find the truth of

disputed facts, who are quite distinct from the Judges or Court. They are to decide upon the effect of the evidence, and thus assist the Court to pronounce a right judgment; but they have nothing to do with the sentence or judgment which follows the verdict. They are not, like the Judges, members of a class, charged with the duty of Judicial inquiry; they are taken from various pursuits to make a special inquiry and return to their ordinary avocations when the labor is over. This distinguishes the system from the Geschwornen-Gerichte of Germany, from the Scandinavian Courts, Norwegian, Swedish and Danish, and from the Anglo-Saxon courts, to each of which speculation has traced it. Even identity in detail does not necessarily imply identity in origin when history shows it to be most improbable. The most remarkable approximation to our own institution seems to have existed at an early period in Russia for the trial of criminal cases."

Mr. Justice Miller, at page 513, then proceeds to say:

"Courts existed in England in the Anglo-Saxon period, presided over by a Reeve or Judge, who had no voice in a decision, and the number of persons who sat as Judges (or Jurors) was frequently twelve, or some multiple of that number; but it was not until the establishment of the assize in the time of Henry II, after these Saxon elements had been continued in force under the Anglo-Normans that the Constitution of the Jury was produced, there the Jury is first found in its distinct form, although the elements of which it was composed were familiar to the jurisdiction of the time. Before that time and in the early Norman reigns it was the practice to decide controversies by appealing to the knowledge of the neighborhood where the parties resided and the land lay. There was no difference in principle between such inquests and the recognition by the knights of assize."

"Passing by the Constitution of Clarendon (1164) the statute of Northampton (1176) and Magna Charta

(1215), we find in a note in Forsyth an account of the earliest record extant of a trial by a regularly constituted *Jurata*, respecting the right to the custody of a Hospital of St. Julian at Southampton. Twenty-four jurors were summoned, twelve acted and gave their verdict for the King. During all this time the jury were both witnesses and Jurors, rendering their verdicts upon their personal knowledge respecting the matter in dispute without hearing witnesses. The change to the present mode was made gradually. By the time of the reign of Edward III, trials by jury in criminal cases were nearly, if not quite the same as the present day. Although the qualification of previous knowledge on the part of Jurors impanelled to try a prisoner had long fallen into desuetude, the fiction was still kept up, by requiring them to be summoned from the hundred, where the crime was alleged to have been committed, until the passing of Stat. 6 Geo., c. 50, by which the Sheriff is now obliged to return for the trial of any issue, whether civil or criminal, twelve good and lawful men of the body of his county, qualified according to law. The jury system was brought by emigrants to this country, to Canada, to Australia, to South Africa, and wherever colonies have been planted by British emigrants. It extended to Scotland but there the Scottish system of law, derived from the civil law, authorized the finding in criminal cases of a verdict of 'Not proven' when the jury was not prepared to find 'Guilty' or 'not guilty.'

"The jury was introduced into France in 1789 in criminal cases but not in civil cases; in Belgium in 1830; in Sardonia, 1850, from whence it has extended into Italy and Germany."

For a further history of the trial by jury, reference is made to the Encylopædia Britannica (9 Ed.), Vol. 13, p. 783, Tit. Jury.

A Brief History of the Office of and the Acts of Congress Affecting the Courts of Justices of the Peace.

The office of justice of the peace is of very ancient origin. They first received the appellation by which they are now known from the Statute 34, Edward 3 (1 Bl. Com., 353–4). At common law their jurisdiction was very limited, and extended only to petty criminal offenses. In this District justices of the peace have no criminal jurisdiction now, their jurisdiction being confined exclusively to civil cases. At common law the nearest approach to the courts of this District were the Courts baron, County Courts, and the Hundred Courts, etc., of England. By the Maryland Act of December 29, 1791, Chap. 68, Sec. 1, justices of the peace in Maryland were given authority to hold pleas in civil cases where the debt or damage did not exceed the sum of ten pounds in money or one thousand pounds of tobacco. By the fourth section of that act the appeal to the county court was provided, and the right was given to either party to demand a trial by jury on such appeal. This act was in force in Maryland when the District formed part of that State and when the Act of February 27, 1801, was passed. When the courts assumed jurisdiction over the District of Columbia by authority of said act of February 27, 1801 (2 Stat., 103), justices of the peace were given cognizance of personal demands to the extent of $20 of value, but there was no provision for a trial by jury but there was provision for an appeal.

By the Act of March 1, 1823 (3 Stat., 743), justices of the peace were given exclusive jurisdiction of all cases where the real debt and damage did not exceed the sum of $50. In every action to be brought by virtue of this act where the sum in dispute shall exceed $20, the act provided that "it shall be lawful for either of the parties to the suit, after issue joined and before the justice shall proceed

to inquire into the merits of the case, to demand of said justice that such action be tried by a jury, and upon said demand said justice is hereby required to issue a venire under his hand and seal, directed to any constable of the county where said case is to be brought, commanding him to summon twelve jurors and be and appear before the justice issuing such venire, at such time and place as shall be therein expressed. And the *jurors thus summoned shall possess the qualifications and be subject to the exceptions provided for jurors by law.*" The act then further provides "That if any of the persons so summoned and returned as jurors shall not appear, or be challenged and set aside, the justice before whom said cause is to be tried shall direct the constable to summon and return forthwith, talesmen, so as to make up the number of twelve, after all causes of challenge have been disposed of by the justice, said talesmen to be subject to the same exceptions as the jurors. And the said twelve persons shall be the jury who shall try the case, each of whom shall be sworn by the justice well and truly to try the matter in difference between the parties, and a true verdict to give according to the evidence. And the said jury being sworn shall sit together and hear the proofs and allegations of the parties in public, and when the same is gone through with the justice shall administer to the constable the following oath, viz: You do swear that you will keep this jury together in some private room without meat or drink except water; that you will not suffer any person to speak to them nor will you speak to them yourself unless by order of the justice until they have agreed on their verdict. And when the jurors have agreed on their verdict they shall deliver same publicly to the justice, who is hereby required to give judgment thereupon forthwith, and the said justice is hereby authorized to issue execution on

said judgment in the manner and under the limitations hereinbefore directed."

Section 17 of said act provides for the amount of fees that shall be allowed the justice and the amount of fees to be allowed to the jurors and to the constable for summoning the jury.

By the act of February 22, 1867 (14 Stat., 401), the jurisdiction of justices of the peace was increased to $100. The Supreme Court of the District of Columbia having concurrent jurisdiction of all claims and demands between $50 and $100. The provisions of the act of March 1, 1823, in reference to the appeal and trial by jury remained unchanged.

By the act of February 19, 1895 (28 Stat., 668), justices of the peace were given exclusive original jurisdiction in all cases where the amount claimed to be due or the value of the property sought to be recovered did not exceed $100, and original and concurrent jurisdiction with the Supreme Court of the District of Columbia of all amounts between $100 and $300. This act further provided "That no appeal shall be allowed from the judgment of the justices of the peace in any common law action unless the matter in demand in such action, or pleaded in set off thereof, shall exceed the sum of $5, nor unless the appellant, with sufficient surety, approved by the justice, enters into an undertaking to pay and satisfy whatever final damage may be recovered in the appellate court."

From all of which it is apparent that the matter of trial by jury in causes authorized by statute to be instituted before the justices of the peace, and the manner of appeal from the judgment of such justice remains substantially as provided in the act of March 1, 1823, with only the superadded requirement of a bond undertaking in the case of an appeal.

It should also be noticed that both by the act of February 22, 1867, and the act of February 19, 1895, power was

given to the Supreme Court of the District of Columbia to make rules and regulations for the conduct of causes before justices of the peace. The language of the act of 1867 is as follows: "That the court shall make and establish rules of practice and prepare and publish forms of pleadings for bringing all forms of actions and the trial thereof, before justices of the peace." The act of 1895 states as follows: "That the court shall make and establish such different rules of practice and principal forms of practice and pleading rendered necessary by the act and the same from time to time to be altered and amended as might be deemed advisable."

So much of the act of 1823 providing for a trial by jury before a justice of the peace and for an appeal from the judgment, as has been incorporated into the Revised Statutes for the District of Columbia, modified by subsequent legislation, is as follows:

Section 1009: "In every action where the sum demanded shall exceed $20.00, it shall be lawful for either of the parties to the suit after issue joined and before the justice shall proceed to inquire into the merits of the case, to demand of the justice that said action be tried by a jury."

Section 1010: "Upon such demand the justice shall issue a venire under his hand and seal, directed to any constable of the District, commanding him to summon twelve jurors to be and appear before the justice issuing such venire, at such time and place as shall be therein expressed."

Section 1012: "If any of the persons summoned and returned as jurors shall not appear or shall be challenged and set aside, the justice before the case is to be tried shall direct the constable to summon and return forthwith, talesmen, so as to make up the number of twelve, after all the causes of challenge shall have been disposed of by the justice."

Section 1011 provides that the jurors shall possess the

qualifications and be subject to the exceptions provided by law.

Section 1013 provides that "The twelve persons shall be the jury which shall try the case, each of whom shall be sworn by the justice well and truly to try the matter of difference between the parties and a true verdict to give according to the evidence."

Section 1014: "The jury being sworn, shall sit together and hear the proofs and allegations of the parties, in public."

Section 1015 provides for an oath to the constable to keep the jury together, etc.

Section 1016: "When the jurors have agreed upon their verdict they shall deliver the same publicly to the justice."

Section 1017: "The justice shall give judgment thereon forthwith, and may issue execution accordingly."

The Court of Appeals of the District of Columbia in the case at bar (10 Appeal Cases, D. C., 225) states in considering these sections: "The order of arrangement in the revision is somewhat different from that in the original act, a circumstance which may not be without some weight in our consideration, but is by no means of controlling importance."

The court in this case, in discussing the act of March 1st, 1823, said, "Very soon after the passage of this act, in fact in the very same year, its scope and construction became the subject of judicial investigations, and five cases are found in the old Circuit Court reports and one case in the Supreme Court reports, where the effect of the statute was sought to be ascertained." The court referred to the following cases:

Sherbourne *vs.* Semmes, 2 Cranch, C. C., 446.
Davidson *vs.* Burr, 2 Cranch, C. C., 515.
Maddox *vs.* Stewart, 2 Cranch, C. C., 523.
Denny *vs.* Queen, 3 Cranch, C. C., 217.
Smith *vs.* Chase, 3 Cranch, C. C., 348.
Fitzgerald *vs.* Leisman, 3 McArthur, 6.

ARGUMENT.

1. *It was the legislative intention of Congress in the act of March 1, 1823 (3 Stat., 743), extending the jurisdiction of justices of the peace in the District of Columbia, to provide for a common law jury in the trial of such cases, and the jury provided by that act is such common law jury.*

The plaintiff in error contends that under the seventh amendment to the Constitution of the United States, justices of the peace in the District of Columbia are not constitutionally empowered to act judicially in cases involving more than $20.00 of value. This contention is an effort on the part of the plaintiff in error to overthrow adjudications which have remained unquestioned in this District since 1823, and were unquestioned until the opinions of justices of the Supreme Court of the District of Columbia in 24 Wash. Law Rep., 406, and in 24 Wash. Law Rep., 646, were handed down.

The seventh amendment to the Constitution of the United States is as follows:

> *"In suits at common law, where the value in controversy shall exceed $20.00, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than by the common law."*

Marshall, C. J., in the case of Gibbons *vs.* Ogden, in 9 Wheaton, 188, said: "The enlightened patriots who framed our Constitution and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they have said." Allen, J., in People *vs.* N. Y. Cen. R. R. Co., 27 N. Y., 487, said: "The written Constitution framed by men chosen for the work by reason of their peculiar fitness, and adopted by the people

upon mature deliberation, implies a high degree of deliberation, and the care of expression proportioned to the importance of the transaction, presumes that the words were used with the greatest possible discrimination." Bronson, J., in The People *vs.* Purdy, 2 Hill (N. Y.), said: "We are not at liberty to presume that the framers of the Constitution and the people who adopted it did not understand the force of their language." "That which the words declare is the meaning of the instrument." (Newell *vs.* The People, 7 N. Y., 9.) In commenting on this rule, Johnson, J., in the case just cited, further says: "This is true of every instrument, but when we are speaking of the most solemn and deliberate of human writings, those which ordain the fundamental laws of States, the rule rises to a very high degree of significance."

In the case of Prigg *vs.* The Commonwealth of Pennsylvania, 16 Peters, Mr. Justice Story, in interpreting the 25th section of the Judicial Act of 1879, Chap. 20, for the purpose of reviewing the judgment of the Supreme Court of Pennsylvania, in a case involving the construction of the Constitution and laws of the United States, at page 612, said:

> "How, then, are we to interpret the language of the acts? The true answer is, in such a manner as that the words shall not fail completely to effectuate the whole object of it. If by one mode of interpretation the right becomes shadowy, unsubstantial and without any immediate power, and by another mode it would attain its just end and secure its manifest purpose, it would seem upon principles of reasoning, absolutely irresistible that the latter ought to prevail. No court of justice can be authorized so to construe any such acts or the Constitution as to defeat its obvious ends, when another construction equally accordant with the words and sense thereof, will protect them."

The seventh amendment was adopted when all the proceedings of the courts of the United States and all the courts of the States were under the common law. It was intended to protect the rights of citizens proceeding under the common law, and **it provided that decisions of juries should not be set aside except according to the common law.**

There are two separate and distinct clauses to the seventh amendment to the Constitution. The first is, "In suits at common law where the value in controversy shall exceed $20, the right of trial by a jury shall be preserved;" and the second is—"No fact tried by a jury shall be re-examined in courts of the United States, other than by the common law." It does not follow that no fact tried by a jury mentioned in the second clause is related to the trial by jury, as provided for in the previous portion. If the two clauses must necessarily be construed together, and regarded as inseparable, they might then be construed as one clause. This, however, is not the view taken by the Supreme Court of the United States in the case of Justices *vs.* Murray, 9 Wallace, 277. The court in its decision quotes Mr. Story, J., in Parsons *vs.* Bedford, *et al.*, 3 Peters, 447, 448, who said in his opinion referring to this part of the amendment, "*It should be read as a substantial and independent clause, and it is a prohibition to the courts of the United States to re-examine any facts tried by a jury, in any other manner.*" A history of the amendment confirms this view.

Debates in Congress by Gales and Seaton, Vol. I, pp. 452, 458, 784.

If the contention of the plaintiff in error that the justices of the peace under said amendment are not constitutionally empowered to act judicially in cases involving more than $20, is correct, then it must follow that justices of the peace

have no jurisdiction to try or power to act in cases where the amount in dispute exceeds $20. It further follows that where a citizen of this District has a demand against his neighbor in excess of the sum of $20, and less than $100, there is no forum open to him in which he can obtain redress.

Mr. Justice Morris, speaking on the subject, in the case at bar (10 Appeal Cases, D. C., at page 242), said:

> "During the period of 70 years, for which the act of 1823 has been in force, either as originally enacted or as incorporated into the Revised Statutes, the course of procedure thereunder has been as established by the decisions of the old Circuit Court of the District of Columbia, to which reference has been made. Appeals have been entertained only from the judgments of justices of the peace when they have acted themselves as judges both of law and of fact without a jury; no appeal has ever been entertained from judgments of the justices rendered upon the verdict of a jury. To overthrow this practice of seventy years, and the construction of the statute upon which it is based, the error of that construction should be made very plainly to appear. In order to show that error and to sustain the right of appeal from the judgments of the justices of the peace in all cases, whether rendered upon verdict of a jury or otherwise, a construction must be put upon the statute which would introduce a monstrosity into our law, a jury which is no jury, but a farce and a fraud, a delusion and a snare, a stone given when bread was asked for. This we cannot regard as the legitimate construction of the act. It would certainly be an utter nullification of its scope and purpose, and of the intention of Congress in its enactment; and, as we think has been shown, no such construction is demanded in order to harmonize the act with the Constitution. On the contrary, we regard such construction as antagonistic both to the letter and spirit of the Constitution."

The Court in referring to this question as affecting the title to property in the District of Columbia, said, on page 245:

> "It would not only affect the title to numerous lots of ground in the District of Columbia, which have been transferred upon writs of execution, but would likewise paralyze the administration of justice in this District in cases involving amounts of more than $20 and not more than $100 of value, for under such a conclusion there can be no tribunal in the District of Columbia competent to take cognizance of such causes. It behooves us to pause before we sanction such a result. We do not find it necessary to adopt the course of reasoning that would necessarily in our opinion lead to it. *Undoubtedly and beyond question, in framing the act of March 1, 1823, Congress had in mind the seventh amendment to the Constitution and it was the intention of that body to provide a common law jury for the trial of issues before Justices of the Peace.*"

Mr. Justice Morris, in the case above cited, in referring to the act of March 1, 1823, said:

> "The statute belongs to the class in favor of which every intendment is to be made. It is not a statute in derogation of the common law and common rights. On the contrary it is a statute intended to extend the domain of the common law and to facilitate the administration of justice. * * * It has evidently been the policy of Congress to enlarge and extend the civil jurisdiction of the justices and it is the duty of the courts in the construction of the statutes, as long as that policy lasts, to seek to give it effect and not to nullify it."

On page 234 of the case above cited, the Court further said:

> "The court of justice of the peace for the cognizance of petty cases, it must be remembered, was part of our judicial system at the time of the adoption of the

Federal Constitution, and had been for nearly two centuries or upwards. The petty courts of England to which it corresponded had been in existence from time immemorial. This court, although limited in the extent of its jurisdiction, was an important factor in the administration of justice; and the Constitution of the United States did not fail to take notice of it; for the reservation of the right of trial by jury in all cases involving more than $20 of value, it evidently intended to leave undisturbed and unaffected by its provisions the petty civil jurisdiction exercised at the time by the justices of the peace. And when the Congress of the United States, for the purposes indicated in the eighth section in the first article of the Constitution, assumed jurisdiction of the District of Columbia, it took it, and it was evidently the intention of the Constitution that it should take it with its then existing judicial system, subject to such modification thereof as might thereafter be made. The court of the justice of the peace within its narrow and restricted limits was as much a part of that judicial system as was the court of general jurisdiction. It was not, of course, one of the courts of the United States to which any part of the judicial power vested in the Federal Government by the third article of the Constitution, could be given; for that article contemplated only the courts of general jurisdiction. But it was a court which, under its general power of legislation over the District of Columbia, the Congress might well adopt or establish. Its establishment was within the usual scope of such legislative power."

"Such being the power of Congress, and it being the plain, unmistakable purpose of that body to provide a common law jury for the court of justice of the peace in cases involving more than $20 of value, the question recurs 'Whether the terms of the act of March 1, 1823, were sufficient to effect the purpose?' * * * The majority of the court in the case at bar are of the opinion that the act of Congress was sufficient to effect such purpose, and that there is nothing in the act to warrant the deduction that a justice of the peace may not in-

> struct the jury in questions of law arising in the case, and that he may not control the matter of the introduction of evidence, or that he may not even set aside the verdict of the jury and grant a new trial. The court said: 'Even if the act of Congress were entirely silent on the subject, the reasonable inference would be that, when the legislature provided the court of the justice of the peace court with a jury, it intended *that such jury should act in accordance with the common law, and should serve precisely the same purpose which it serves in the common law.*' "

When Congress says, as it does in said act of 1823, that in special cases there must be trial by jury, it must be taken to mean what it says, and it can only mean such a jury as is required by the seventh amendment to the Constitution. This not only appears from the act itself, but from the debates in the Senate preceding the passage of the act, and from these debates the same inference is to be drawn. In these debates it appears that among the amendments offered, was one by Mr. Southard, which proposes to strike out all, the bill allowing a jury trial before the justice of the peace and substituting "That if the party to the debt did not waive the jury trial then the case should be referred to the court of the county." (40 Congressional Rec., 270.)

Section 1011 of the Revised Statutes for the District of Columbia provides "That the juries (meaning the jury in courts of justice of the peace) shall possess the same qualifications and be subject to the exceptions provided for juries by the law."

In the case of Hendley *vs.* Clark, 8 App. D. C., 165, the court said—

> "Congress has conferred jurisdiction upon justices of the peace in most ample terms, and we are bound to assume that the jurisdiction was intended to be exercised. * * * However, should undesirable complica-

tions arise, it is a matter for the legislature, and possibly for the Supreme Court of the District of Columbia, to regulate in granting it the power to carry the act into effect."

The Statute plainly contemplates that in the conduct of the trial by jury, the justice of the peace must exercise judicial functions; he undoubtedly exercises judicial functions in the handling of the jury, and in all cases of challenge the justice disposes of same, and he is required to swear the jury who are to try the matter in dispute and render their true verdict according to the evidence. That a magistrate can exercise judicial functions in disposing of questions of law touching the capacity of the jury, is settled, and why can he not exercise judicial functions in passing upon questions of law arising during the trial, when the act contains no restrictions upon the exercise of such functions?

Plainly under the Statute it is not for the jury, but for the justice, to decide upon the introduction of testimony in the trial, or necessarily to rule upon the competency of the testimony which is offered to be adduced. This is the main function of the judge or presiding officer in the trial by jury. Instruction is only given upon the law when asked for or deemed proper by such presiding officer himself, to be given, that Congress has not provided some proper and satisfactory method by which the questions of law passed upon in the magistrate's trial, either by Bill of Exceptions, or otherwise, can be reviewed in an appellate court, is no argument against the inferior jurisdiction of the tribunal. This is a defect which the legislature and not the courts must remedy.

The mere fact that the law requires the justice to enter a judgment on the verdict forthwith, does not necessarily prevent him from granting a new trial, for the word "forthwith" only directs the entering of the judgment immediately with-

out waiting four days, but would his doing so affect the trial as a common law trial? The motions that lie between the verdict and the judgment are not essentially a part of the common law trial, and a motion in arrest of judgment could not be had because there were no pleadings, and even if there were it would not abolish the right of the party to a motion in arrest of judgment, and it in no way affects the right of trial by jury; neither does the fact that the jury shall be the sole judges of the facts, and certainly if the justice has the right to instruct the jury on the law, his decision on the facts can in no way deprive the litigant of his trial by jury.

In Maryland the legislature has abolished motions in arrest of judgment in criminal cases, and has even gone so far as to allow the jury to be both judges of law and of fact.

The justice certainly has the right to preside at the trial in the capacity of an ordinary judge.

> "When the justice presides over a jury trial, the same rules of propriety should control his conduct as are presumed to govern that of judges of courts of record. The justice should preside over the trial with becoming dignity; his province is clearly defined. It is his duty to administer the oaths to the witnesses and to pass upon the competency and relevancy of the testimony offered."
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> Amer. and Eng. Enc. of Law, Vol. 12, 1st Ed., p. 464.

In the case of Adams *et al. vs.* Clark, 64 Ga., 648, it was held—

> "That a justice of the peace on a trial before a jury in his court, may or may not give the law, in his charge to the jury, at his option. If he does so and charges the law correctly, it will not be a ground for a new trial."

"A justice of the peace may instruct the jury upon the questions of law, and if he instructs them erroneously, the judgment will be reversed."

Trustees of Village of Penyan *vs.* Thorn, 6 Hill (N. Y.), 626.

DeLancey *vs.* Nagle, 16 Barber (N. Y.), 96.

When Congress provided for a trial by jury in the Police Court of the District of Columbia, it equally failed to provide for any express power in the justice of that court to act in such trial.

See act of July 3, 1892 (27 Stat., 261).

See act of March 3, 1891 (26 Stat., 248).

It is the practice of the justices of the Police Court of the District of Columbia, and properly so, to control the admission of evidence, and to instruct their juries upon the law, and also to award new trials.

The court, in the case at bar, page 237, said:

"It can scarcely be controverted with reason that the act of Congress of March 1, 1823, provided for the court of justice of the peace, a common law jury, if it was competent for it under the Constitution so to provide; and it is in this question of constitutional power of Congress so to provide, that the gist of the controversy lies. The question then, is narrowed down to the inquiry: 'Whether in legislating for the District of Columbia, it was competent for Congress of the United States to provide for the empannelling of a common law jury in the courts of justices of the peace for the determination of questions of fact arising in suits instituted before such justices?'"

The court then asks this question:

"Why is it not competent for Congress so to provide? For the difficulty would seem to be not to find the requisite authority in the courts, but to find the expressed investing of them with such authority."

Congress has been given exclusive jurisdiction over the District of Columbia, and it has been provided with all proper legislation not prohibited by the Constitution and not inconsistent with our public institutions.

Stoutenburg *vs.* Hennick, 129 U. S., 141.
Loughboro *vs.* Blake, 5 Wheaton, 317.

The right of appeal, which has been provided by Section 1009 of the Revised Statutes for the District of Columbia from the judgment of justices of the peace, to the Supreme Court of the District of Columbia, not considered with regard to the context, might be presumed to authorize appeals from judgments of justices in controversies involving more than $5 of value, whether rendered upon a hearing by a jury or otherwise, and the constitutional inhibition be considered to extend to only those cases in which Congress has given the right; those cases could be only such as are tried by the justice without a jury. There is no absolute right of appeal; there was none at common law. Even the Bill of Exceptions, by which means a cause at common law may be reviewed in the appellate court, is a creation of statute law.

"The Supreme Court of the United States has repeatedly held that it can exercise only such appellate power as is given it by Congress."

B. & O. R. R. Co. *vs.* Grant, 98 U. S., 398.
McKane *vs.* Durston, 153 U. S., 684–7.
Andrews *vs.* Swartz, 156 U. S., 272–5.

"The so-called right of appeal is not an absolute, infallible right, of parties, but it may be given, regulated or taken away by act of Congress without violation of any inhibited right."

10 Appeal Cases D. C., 244.

As the Court of Appeals in this case said :

> " It seems that there is no constitutional inhibition that would prevent Congress from providing a common law jury for the courts of justice of the peace, and in as much as it is clear that it was plainly the legislative intention in the act of Congress of 1823 to provide such, and as the terms in said act were clearly used for that purpose, the conclusion would necessarily follow that the act was the rightful constitutional exercise of legislative authority, and *the jury provided by that act is such a jury as was contemplated by the first clause of the seventh amendment to the Constitution.*"

2. *Justices of the peace under the Act of Congress of March 1, 1823, and the subsequent acts of Congress enlarging the jurisdiction of justices of the peace, have full power to try with a jury, such cases involving more than $20.00 of value, and the said trial does not conflict with the seventh amendment of the Constitution.*

If the jury trial before justices of the peace is not a common law jury trial, then the defendant has a right of appeal, and he can have his constitutional right of trial by jury in the Supreme Court of the District of Columbia, which is a sufficient constitutional guarantee.

Congress has the right to establish inferior tribunals without a common law jury, and no one can take exception thereto on the ground that he is deprived of his constitutional right of trial by jury, provided an appeal will lie from such tribunal to a court where he can obtain his constitutional jury trial.

Stewart *vs.* the Mayor and City Council of Baltimore, 7th Md., p. 500.
Morford *vs.* Morford, 8 Yerger, 444.
McDonald *vs.* Schell, 6 Scargt & Rawle, 240.

Mr. Chief Justice Alvey, in his dissenting opinion in the case at bar, says:

> "It has been held in many cases, as shown by Judge Cooley, that it is competent to deny the parties the right of trial by jury in the court of first instance, provided the right is allowed on appeal. It is undoubtedly competent, says the author, to create new tribunals without common law powers and to authorize them to proceed without a jury; but a change in the forms of action will not authorize submitting common law rights to tribunals in which no jury is allowed."
>
> Cooley—Constitutional Limitations, 6 Ed., 505.
>
> 32 Ohio State, 275.

The court then proceeds to say:

> "The general principles have been modified as applied to criminal cases, upon the principle that the accused should not be first convicted by a court, and then be subjected to another trial by a jury to which he is constitutionally entitled. It is therefore to be held that the prisoner has a right to a trial by a jury from the first moment, in whatever court he is put on trial for the offense charged."

The court then proceeded to say:

> "It is manifest, however, that there is a marked distinction between the case of the criminal charge involving a life or liberty of the party accused, and that of a proceeding for the recovery of some debt or demand as between party and party. The case of Callan *vs.* Wilson (127 U. S., 540), was decided on the construction of the second section of the third Article of the Constitution, which declares that the trial of all crimes, except in the case of impeachment shall be by a jury, and on the construction of the sixth amendment to the Constitution, which declares 'That in all criminal prosecutions, the accused shall enjoy the right

to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed,' but the right of trial by jury secured by the 7th amendment to the Constitution applies only to civil cases, in which lawful rights are to be ascertained and determined, as distinguished from the rights in criminal and equitable cases."

And the court further said on page 252 of said case before cited:

"In view of the exclusive legislative power of Congress over this district it is difficult to conceive how the question could be raised as to the want of power in Congress to provide for a jury as an aid to the exercise of the jurisdiction of justices of the peace. But whether such jury is a common law jury and therefore within the meaning and contemplation of the seventh amendment to the Constitution of the United States, or a jury purely a statutory creation in analogy to the common law jury, is another and a different question."

"Whenever facts are to be found in any proceeding in which a jury is not required by the common law, a jury of any number of men may be authorized in the discretion of the legislature. The justice courts, not being courts of record, are not within the Constitutional provision just mentioned. Juries do not form a part of the machinery of such tribunals, by the common law, and so long as an appeal is provided for, to the common law courts from their determination, no statutory objection can be raised as to whether the facts are found by a justice or by the aid of a jury of any number of men."

Thompson and Merrian on Juries, Sec. 10.

Counsel for plaintiff in error appears to admit that causes can be tried before a justice of the peace with the aid of a jury, provided there is an appeal to the Supreme Court of

the District of Columbia, for he sets forth as his fifth assignment of error the following:

"The Court of Appeals erred in holding that there can be no appeal to the Supreme Court of the District of Columbia from the judgment of a justice of the peace in said district, in a case tried by jury before said justice."

(Page 3 of Brief for Plaintiff in Error.)

Mr. Chief Justice Alvey, of the Court of Appeals of the District of Columbia, held that an appeal would lie in this case, and he held that the order of the Court below overruling motion to quash writ of certiorari and quashing part of proceedings before the justice of the peace should be reversed and the petition for the writ of certiorari be dismissed for the reason that an appeal from the judgment of the justice of the peace would furnish to the defendant the appropriate remedy for any grievance it might have by the judgment of the justice.

Mr. Chief Justice Alvey, in his dissenting opinion in the case at bar, at page 258, says:

> "The constitutionality of the act has never been seriously challenged until by decision of the court below recently made, the act has been declared unconstitutional and void. This carries with it many serious consequences that should be avoided if possible. The act has been in force for three-quarters of a century, and during that time a great many rights have arisen which are founded on the validity of proceedings had under that act. To have declared the act to have been unconstitutional and void from the commencement, with the consequence of the invalidity of all proceedings thereunder, would likely have caused great trouble and confusion. With all due respect to the opinions of others, however, *I am of the opinion that the act is con-*

stitutional and that the right to a trial by jury as contemplated by the Constitution, and according to the principles of common law, is amply secure to either party by right of appeal to the Supreme Court of the District of Columbia."

The questions herein involved have again been passed upon by the Court of Appeals of the District of Columbia, in 11 Appeal D. C., 57, on April 27, 1897, in the case of the Metropolitan Railroad Company, Appellant, *vs.* Samuel R. Church, a Justice of the Peace in and for the District of Columbia. Mr. Justice Morris, in rendering the opinion of the court, said:

"The facts and circumstances of the case do not differ substantially from those of the case of Hof *vs.* The Capital Traction Company, 10 App. D. C., 205. The question perhaps, is here more distinctly and specifically raised of the unconstitutionality of the act of Congress of March 1, 1823 (3 Stat., 743), so far as it authorizes justices of the peace to summon juries in cases pending before them, as well as the unconstitutionality in the same regard of all the subsequent legislation of Congress enlarging the jurisdiction of justices of the peace, but there is otherwise no difference.

"*We sustained in the case of Hof vs. The Capital Traction Company the constitutionality of the enactments in question, and we adhere to that decision.*"

The history of legislation in the States shows a constant tendency to enlarge the civil jurisdiction of justice's courts. This has been done in all the States except New Hampshire and Maine. (See Appendix.) Our own parent State,

Maryland, after retaining the limit for many years at one hundred dollars by act of Legislature of 1898, raised the jurisdiction to two hundred dollars for the city of Baltimore.

In all these States the highest courts have met the same constitutional difficulties which have been raised here and have overcome them.

Respectfully submitted,

ALEXANDER WOLF,

Attorney for Defendant in Error.

APPENDIX.

Civil Jurisdiction of Justices of the Peace in the States of the Union.

Alabama		$100.00
Arizona	up to	300.00
Arkansas	" "	300.00
California	" "	300.00
Colorado	" "	300.00
Connecticut	" "	100.00
Delaware	" "	200.00
Florida	" "	100.00
Georgia	" "	100.00
Idaho	" "	300.00
Illinois	" "	200.00
Indiana	" "	200.00
Iowa	" "	100.00
	(By consent of parties $300.00.)	
Kansas	up to	300.00
Kentucky	" "	100.00
Louisiana	" "	100.00
Maine		20.00
Maryland		100.00
	(By act of the Legislature of 1898, for the city of Baltimore $200.00.)	
Massachusetts (called "Trial Justices")	up to	300.00
Michigan	up to	300.00
Minnesota		100.00
Mississippi	up to	200.00
Missouri	" "	250.00
Montana	" "	300.00
Nebraska	" "	200.00
Nevada	" "	300.00
New Hampshire	" "	13.33
New Jersey	" "	200.00
New Mexico	" "	100.00
New York	" "	200.00
	(And by confession $500.00.)	

North Carolina	up to	$200.00
North Dakota	" "	200.00
Ohio	" "	300.00
Oklahoma	" "	100.00
Oregon	" "	250.00
Pennsylvania	" "	300.00
Rhode Island (called District Court Justices)	up to	300.00
South Carolina (called Magistrates)	up to	100.00
South Dakota	up to	100.00
Tennessee	" "	500.00
Texas	" "	300.00
Utah	" "	300.00
Vermont	" "	200.00
Virginia		100.00
Washington State	up to	100.00
West Virginia	" "	300.00
Wisconsin	" "	200.00
Wyoming	" "	200.00

(Hubbell's Legal Directory, Edition, 1898.)

Additional Rules of Practice

BEFORE

JUSTICES OF THE PEACE

IN THE

DISTRICT OF COLUMBIA

ESTABLISHED AND PRESCRIBED BY

The Supreme Court of the District of Columbia

Promulgated July 31, 1895

WASHINGTON
SIMMS & LEWIS, PRINTERS
1899

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA,

Sitting in General Term-

October 25th, 1872.

Proceedings before Justices of the Peace, Rule as to New Trials.

Ordered that any Justice of the Peace may, in his discretion, within four days after judgment, open the same and grant a new trial.

D. K. CARTTER,

Chief Justice.

2nd Minutes General Term, Page 101.

A TRUE COPY.
TEST:
J. R. Young, Clerk
By R. J. [illegible]

RULES OF PRACTICE BEFORE JUSTICES OF THE PEACE.

In compliance with section 29 of the act of Congress approved the 19th day of February, 1895, the following additional rules of practice and forms of process and proceeding are hereby made, established, and prescribed by the supreme court of the District of Columbia to be observed in civil suits or actions before justices of the peace:

UNDERTAKING ON APPEAL.

1. The following is adopted in lieu of rule 92 of the common law rules relating to appeals from judgments of justices of the peace:

No appeal, except in cases where the United States or the District of Columbia is appellant, shall be allowed from the judgment, unless the appellant, with sufficient surety or sureties approved by the justice, shall enter into an undertaking to the following effect:

A—— B——
v.
C —— D——.

Before —— ——, one of the justices of the peace for the District of Columbia.

The —— desiring to appeal from the judgment of the justice of the peace rendered against —— in the above-entitled cause, on the —— day of ——, 189—, to the supreme court of the District of Columbia, he and —— ——, his surety or sureties, hereby appearing and submitting to the jurisdiction of the said supreme court, undertake jointly and severally to pay and satisfy whatever final judgment may be recovered against them in the said court, which judgment may be entered against them jointly or either of them separately in this case.

Given under our hands this —— day of ——, 189—.

—— ——.
—— ——.

ATTACHMENT BEFORE JUDGMENT.

UNDERTAKING.

2. The plaintiff's undertaking shall be as follows in form or effect:

IN JUSTICE'S COURT OF THE DISTRICT OF COLUMBIA, —— DAY OF ——, A. D. 18—.

A. B., PLAINTIFF,
v.
C. D., DEFENDANT. } At law, No. —.

The plaintiff, and —— ——, his surety, hereby appearing and submitting

to the jurisdiction of the court, undertake for themselves and each of them, their and each of their heirs, executors, and administrators, to make good all costs and damages which the defendant may sustain by reason of the wrongful suing out of the attachment to be issued in this cause against said defendant. And if said attachment shall be dissolved they consent that the said damages may be ascertained and judgment given therefor in this case against either or all of the persons whose names are signed hereto by the justice trying the case, or by the supreme court of the District of Columbia in case of an appeal.

Witness our hands and seals this —— day of ——, A. D. 18—.

—— ——. [SEAL.]
—— ——. [SEAL.]
—— ——. [SEAL.]

Taken and acknowledged before me, and by me approved this —— day of ——, A. D. 18—.

—— ——, *J. P.* [SEAL.]

3. When the affidavits and undertaking required by law have been filed, the justice of the peace shall issue the writ of attachment and garnishment in form or effect as follows:

FORM OF WRIT OF ATTACHMENT.

IN JUSTICE'S COURT OF THE DISTRICT OF COLUMBIA.

A. B., PLAINTIFF, }
v. } At law, No. —.
C. D., DEFENDANT. }

The President of the United States to —— ——, or to any qualified constable of the District of Columbia, greeting.

You are hereby commanded to attach, seize, and take into your custody the defendant lands, tenements, goods, chattels, and credits, or his interest therein, which shall be found in this District, to the value of —— dollars and —— cents, with interest, the amount of the plaintiff demand against the defendant, as shown by his affidavit, duly supported, and the further sum of —— dollars and —— cents for the costs and charges which may accrue in this case, and the same so attached safely keep, subject to the orders of this court; and should you attach the defendant goods, chattels, or credits in the possession of any other person, you shall summon such person to appear before this court within ten days, exclusive of Sundays and legal holidays, after the service of this writ upon such person, to show cause why said goods, chattels, and credits, so attached, should not be condemned and execution thereof made, by delivering to him a copy of this writ and interrogatories hereto annexed.

Given under my hand and seal this —— day of ——, A. D. 18—.

[SEAL.] —— ——, *J. P.*

INTERROGATORIES TO GARNISHEE.

The plaintiff may exhibit the following

INTERROGATORIES TO BE ANSWERED BY THE GARNISHEE.

1. Whether he is, or was at the time of the garnishment, indebted to the defendant? If so, how, and in what amount?

2. Whether he has now, or had at the time of serving the notice, or has had at any time between the date of service and the time of answering, any goods, chattels, or credits of the defendant?

And such other interrogatories as the plaintiff may think proper to propound within the limits of this rule.

UNDERTAKING FOR DISCHARGE OF PROPERTY.

4. If the defendant shall apply to have the property or credits attached discharged from the lien of the attachment he shall give an undertaking in form or effect as follows:

IN JUSTICE'S COURT, DISTRICT OF COLUMBIA, THE —— DAY OF ——. 189—.

A—— B——)
v.
C—— D——.)

Before ——— ——, justice of the peace.

A constable of the said District, by virtue of an attachment issued at the instance of the plaintiff, having levied the same upon the following property and credits of the defendant, to wit (here specify the property and credits), and the said defendant desiring to have said property and credits discharged from the custody of the officer: Now, therefore, said defendant and —— ——, his suret—, hereby appearing and submitting to the jurisdiction of the court, undertake to pay and satisfy such judgment, if any, as may be rendered against the defendant in this case.

Given under our hands this —— day of ——, 189—.

——— ——.
——— ——.

Signed and delivered by ——— ——— and ——— ——— in my presence this —— day of ——, 189—.

——— ———, *J. P.*

RIGHT OF SURETIES TO INQUIRY.

5. If the plaintiff shall proceed to enforce a recovery upon the undertaking referred to in the last preceding rule, the sureties herein shall have the right to an inquiry before said justice, or before the justice and a jury, as to the value of the thing at the time it was so discharged from the custody of the officer; and the judgment upon such undertaking shall not be for a greater sum than such value so ascertained, and the costs and disbursements.

MOTION TO QUASH ATTACHMENT.

6. On the hearing of the motion to quash, authorized by section 5 of the act of Congress aforesaid, the justice may consider oral testimony to be produced by either party in connection with the

affidavits filed, and also further affidavits to be filed upon notice to the opposite party, or may decide the same upon the affidavits previously filed, alone, if neither party shall desire to produce oral testimony or further affidavits; the justice requiring at least two days' previous notice to be given to the parties of the time of hearing ing such motion.

ORDER OF PUBLICATION.

7. In attachment and replevin suits the summons shall not be returnable in less than ten days (exclusive of Sunday and holidays) from the date of the issue thereof, and the constable shall not return the same "not to be found" until the return day thereof. The form of the order of publication prescribed by section 11 of the statute shall be used in attachment and in replevin cases, and the order shall be published in some newspaper in the District, to be selected by the justice of the peace, at least three times, the first of which shall be at least twenty days (exclusive of Sundays and legal holidays) before the day fixed therein for the defendant's appearance.

But no order of publication shall be made or published in any case unless property has been attached or seized by the constable.

The proof of publication and the proceedings thereon in such cases shall conform to the requirement of sections 6 and 7 of rule 16 of the common law rules of this court.

REPLEVIN.

UNDERTAKING.

8. The undertaking to be given by the plaintiff in replevin shall be in form or effect as follows:

IN JUSTICE'S COURT, DISTRICT OF COLUMBIA.

A—— B—— }
v.
C—— D——. }

The plaintiff intending to sue out a writ of replevin to seize the following goods and chattels in possession of defendant, to wit (here specify the goods and chattels), he and —— ——, his surety, hereby appearing and submitting to the jurisdiction of the court, undertake to abide by and perform the judgment of the said justice's court in the premises, which judgment may be rendered against each and all of us whose names are signed hereto.

Given under ou hands this —— day of ——, 189—.

—— ——.

—— ——.

Signed by —— —— and —— —— in my presence this —— day of ——, 189—, and approved by me as sufficient.

—— ——, *J. P.*

9. Upon the filing of the declaration and a copy thereof for each defendant and the affidavit and undertaking as required by law, the justice of the peace shall issue a summons to the defendant to answer the action in the usual form, to which shall be attached a copy of the declaration, and shall also issue the writ of replevin in form or effect as follows:

The form of the writ of replevin to be issued by the justice shall be similar, *mutatis mutandis*, to that contained in section 2 of rule 14 of the common law rules of this court.

TRIAL OF RIGHT OF PROPERTY.

10. In case of an appeal from the judgment of a justice of the peace determining the right of property, on application made by a claimant, or by a defendant claiming such property as exempt from execution, the constable shall retain the possession of such property during the pendency of said appeal, unless the same be sold as perishable or by consent, or unless the defendant, his agent or attorney, or the other person claiming said property, shall give an undertaking, with one or more sureties to be approved by the justice of the peace, in form or effect as follows, to wit:

IN JUSTICE'S COURT, DISTRICT OF COLUMBIA.

A—— B—— }
v.
C—— D——. }

Before —— ——, one of the justices of the peace for said District.

J—— S——, one of the constables of the said District, having, by virtue of an execution (or attachment) issued in the above-entitled cause, seized and taken into his possession the following personal property, to wit (here specify the property), and (any person other than the defendant claiming the same, or the defendant having claimed that said property is not liable to seizure or sale, as the case may be) with his or their —— sureties, appearing and submitting to the jurisdiction of the said justice of the peace and to the supreme court of the District of Columbia, undertake to deliver to the officer the said property or pay the value thereof if the judgment of the court shall be against said claimant. And they consent that the value of the property may be ascertained at the same time the right of property is tried, and that judgment may be given against each and all the parties signing this undertaking, in the alternative, for the delivery of the property to the officer, or the payment of the value thereof and costs.

Given under our hands this —— day of ——, 189—.

——— ——.

——— ——.

If the justice of the peace shall take such undertaking after the appeal has been perfected and he has forwarded the papers to the clerk of the supreme court of the District, he shall immediately transmit such undertaking to said clerk.

JUDGMENT UPON AFFIDAVIT.

11. In an action before a justice of the peace for money claimed to be due by contract, express or implied, if the plaintiff, his agent or attorney, having knowledge of the facts, shall file an affidavit at the commencement of the suit setting out distinctly the cause of action and the sum claimed due on account thereof, and that the defendant has no just defense thereto, a judgment by default may, without further proof, be entered at any time after the return day of the summons unless the defendant shall file an affidavit on the return day, or within such further time as may be prescribed by the justice, stating that he has a just defense to the plaintiff's claim or some part thereof, and stating specifically, in precise and distinct terms, the grounds of his defense, which must be such as would, if true, defeat the plaintiff's claim in whole or in part. If the affidavit of the defendant denies only a part of the plaintiff's claim, he (the plaintiff) may elect to take judgment by default for the part not denied by the defendant's affidavit, and if he shall do so, that shall be a waiver of the residue of his claim.

The provisions of this rule shall not apply to defendants who are representatives of a decedent's estate except when the affidavit filed with the declaration sets forth that the contract sued on was directly with such representative, or that a promise to pay was made by him.

When the defendant is a corporation, the affidavit of defense may be made by an officer, agent, or attorney of such corporation.

DEPOSITIONS.

12. Where the testimony of nonresident witnesses is desired by either party the justice of the peace may, on motion designating the names of such witnesses, appoint an examiner to take such testimony and may issue a commission under his hand and seal; and said testimony shall be taken on written interrogatories and cross-interrogatories, which interrogatories shall be filed with the justice of the peace at least ten days before the issue of such commission so that the adverse party may have opportunity to file

cross-interrogatories, but the justice of the peace, for special cause shown, may direct that such testimony shall be taken orally.

The commission to be issued under this rule shall conform as near as may be to that in use in the supreme court of the District in like cases.

FEES OF JUSTICES, CONSTABLES, WITNESSES, AND JURORS.

The following schedule of fees for justices of the peace, constables, witnesses, and jurors is adopted, and no justice of the peace or constable shall charge or receive any compensation for services not herein specified, nor shall he charge or receive any greater or less sum for any service than herein provided under any agreement or contract to that effect with any suitor:

For issuing every summons to commence a suit	$0.25
For every additional name, if there be more than one defendant	.05
For each copy of summons or subpœna	.10
For each subpœna for witness	.20
For administering any oath or affirmation at trial	.05
For trial fee	.50
For entering judgment without trial	.20
For each continuance	.15
For filing and entering every declaration, plea, or other paper	.10
For hearing argument on any motion to quash attachment	.30
For entering judgment	.25
For entering satisfaction or discontinuance	.25
For issuing fieri facias	.25
For issuing scire facias	.50
For each copy thereof	.10
For preparing and entering supersedeas bond	.25
For preparing appeal bond, certificate of appeal, and transmission of record	1.00
For writ between landlord and tenant, including affidavit and complaint	1.00
For writ of restitution	.50
For preparing affidavit or affirmation	.25
For issuing warrant on application of the United States or District of Columbia, including affidavit and complaint	.50
For warrant against witness for contempt in disobeying summons	.25
For commitment	.25
For certifying papers to the supreme court, District of Columbia, where no property is found whereon to levy	.50
For return on certiorari, to be paid by the party applying therefor	.50
For short copy of judgment	.50
For attachment on judgment and interrogatories	1.00
For each copy	.10
For bond for costs by nonresidents before entering suit	.25
For attachment for rent, declaration, affidavit, summons	1.00
For attachment against nonresident, etc., with declaration, affidavits, notice to plead, and copies	1.00

For order of publication	$0.25
For order of sale for perishable property	.25
For writ of replevin, with declaration, bond, affidavit, notice to plead, and copies	1.00
For issuing venire facias	.25
For swearing jury	.25
For trial with jury, in addition to other fees, for each day; or in forcible entry and detainer	.50
For recording proceedings therein	.75
For witness's fee, each witness subpœnaed and sworn, per diem	.33⅓
For juror's fee, each juror sworn, per diem	1.00
For taking recognizance or undertaking for costs in any case	.25
For discharge from jail	.25
For every acknowledgment of deed or other instrument of writing, for each person signing	.25
For issuing venditioni exponas	.25
For docketing and indexing suit on change of venue	.25
For filing interrogatories to take depositions, issuing commission and filing return of same	.75
For entering return of execution	.10

CONSTABLE'S FEES.

For serving every summons, each copy	.50
For serving each subpœna	.50
For serving seven days' summons in cases of landlord and tenant	.50
For serving all attachments and writs of replevin	1.00
For serving attachment on judgment	.50
For serving warrant against witness for contempt in disobeying summons.	.50
For transfer of papers from one justice to another on change of venue	.25
For summoning each juror accepted in case of trial by jury	.25
For taking charge of jury	1.00
For serving writ of scire facias	.50
For return of writ of fieri facias	.50
For summoning and swearing three appraisers	1.00
For all services in connection with writs of attachment other than service and appraisement, 3 per cent. on the amount recovered.	
For all services in connection with writs of replevin other than service and appraisement, 3 per cent. on the appraised value.	
For notice of sale	.25
For executing a writ of possession of real estate (all other expenses necessarily incurred in executing the writ to be paid by the landlord)	1.00

All charges for fees and costs for the officers above named which are not comprehended in the above schedules, under the statutes or rules of this court, are to remain in force until otherwise ordered.

The foregoing rules and schedules of charges for fees of officers and costs are hereby adopted by the supreme court in general term this day, and are ordered to be entered upon the minutes of the court.

By the court:

A. B. HAGNER, *Presiding Justice.*

JULY 31, 1895.

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